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In re Application of
BILGER et al.
Application No.: 10/561,493
PCT No.: PCT/DE03/02750
Int. Filing Date: 18 August 2003
Priority Date: 06 September 2002
Attorney's Docket No.: 2002P11311WOUS
For: DISTRIBUTION OF PRINTER PAPER

DECISION ON

PETITION

UNDER 37 CFR 1.181

This decision is in response to applicant's 03 November 2005 "Petition to Accept Application and Assignment of Filing Date". Applicant, in effect, requests acceptance of a copy of international application PCT/DE03/02750 for filing in lieu of the original application allegedly filed United States Patent and Trademark Office (USPTO) on 25 February 2005. The petition is treated as a petition under 37 CFR §1.181. No petition fee is required.

BACKGROUND

On 18 August 2003, applicant filed the above-identified international application which claimed a priority date of a German application filed on 06 September 2002. The thirty month period for entry into the U.S. national stage expired at midnight on 06 March 2005.

On 25 February 2005, applicant allegedly filed the international application PCT/DE03/02750 in the USPTO. These papers were not assigned a U.S. serial number. Upon inquiry to the USPTO regarding the status of the application, counsel was advised that the application papers could not be located.

On 03 November 2005, applicant refiled copies of the U.S. application as allegedly filed 25 February 2005. Applicant, in effect, requests acceptance of the copy of the application in lieu of the originals allegedly filed on 25 February 2005, according a filing date of 25 February 2005.

DISCUSSION

Applicant requests that the apparent copy of the international application filed with the petition be accepted as a replacement for the missing original papers with a receipt date of 25 February 2005 being accorded thereto based on the alleged delivery of the originals to the

USPTO on 25 February 2005.

The evidence submitted by applicant in the petition included a copy of the application including specification, claims and drawings; a copy of the DHL mailing label receipt bearing no. "454 7920 591", and a copy of the tracking detail regarding its delivery to the USPTO.

The DHL mailing label (454 7920 591) bears an incorrect delivery address for hand delivery to the USPTO for 25 February 2005. The DHL mailing label indicates an incorrect delivery address as: 2001 South Clarke Place, Customer Window, Box, Cristal (sp) Plaza Two, Lobby, Room1B03, Arlington, VA. This address was no longer available as a delivery address for the USPTO as of midnight January 13, 2005.

As of January 14, 2005, the USPTO Customer Service Window for hand-delivery of patent-related correspondence was relocated to: Customer Service Window, Randolph Building, 401 Dulany Street, Alexandria, VA 22314. Notice of this relocation was posted in the January 2005 issue of the PCT Newsletter published by the World Intellectual Property Organization (WIPO) (copy enclosed.) and in the USPTO's Official Gazette 01 February 2005 (copy enclosed).

A close look at the Tracking Results Detail for #454 7920 591" indicates contradictory delivery information: On "2/25/2005 2:04 pm Shipment delivered"; however, on "2/28/2005 7:34 pm Recipient refused delivery". (Emphasis added.) This is not evidence of delivery of the application papers to the USPTO on 25 February 2005, to an address that was no longer in use.

A review of USPTO records reveals that such attempted delivery was not received in the Office. Since the application was not delivered to the USPTO and applicant has not provided proof of such delivery in accord with MPEP §500 et. seq., the copy of the application delivered to the USPTO cannot be accorded a filing date of 25 February 2005.

The international application PCT/DE03/02750 was abandoned at midnight 06 March 2005 for failure to enter the U.S. national stage by the thirty month period. The filing of the application papers on 03 November 2005 does not revive the international application.

Options

Applicant is advised of his options to file a petition to revive his abandoned application under 37 CFR 1.137(a) or (b). The appropriate forms and relevant MPEP section 711.03(c) can be located at www.uspto.gov. Applicant is reminded that the filing of any petition under the unintentional standard cannot be intentionally delayed. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay was unintentional. A statement that the delay was unintentional is not appropriate if the petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

CONCLUSION

The petition to accord a filing date of 25 February 2005 to the application papers filed on 03 November 2005 is DISMISSED without prejudice.

International application PCT/DE03/02750 is ABANDONED for failure to enter the U.S. national stage by the thirty month period.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the

Office of PCT Legal Administration.



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